APPENDIX A

ORDER ON DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL OR FOR NEW TRIAL

(Filed April 19, 1972)

After nine days of trial and another day of argument and deliberation, the jury in this case returned a verdict of guilty on all five counts of the indictment charging defendant with corruptly accepting and receiving bribes, or "kickbacks," thereby committing a fraud against the United States while in the performance of official duties in 1969, as recreation officer at Sangley Point Naval Base, Philippines. Numerous pre-trial motions made by defendant were considered and Counts Five and Six of the original indictment were dismissed. Defendant was furnished a transcript of testimony of witnesses before the grand jury and was granted extensive discovery procedures with respect to the charges placed against him. These were extraordinary in their nature in this Court's experience, but were granted at defendant's special urging in view of the unusual nature of the case. Objections to venue and jurisdiction were considered and the Court ruled that venue was proper under 18 U.S.C. §3238 for trial at Memphis, Tennessee, and that jurisdiction properly lay in this Court.

Constitutional challenges were also considered with regard to the statutes in question, for the violation of which defendant has been found guilty. Objections based upon multiplicity of counts and charges have also been considered prior to trial and under the authority of **Egan v. U.S.**, 287 F.2d 958; **McMullen v. U.S.**, 96 F.2d 574 (D.C., 1938); **U.S. v. Powell**, 420 F.2d 949 (6th Cir., 1970), and **U.S. v. Henderson**, 120 F.2d 592 (7th Cir., 1941), we overruled these objections.

The Court also acted on defendant's motion or request for subpoena duces tecum as to certain matters of evidence prior to trial (See our Order of 12-28-71).

With this background, together with numerous motions and objections during the long trial made by vigorous counsel for defendant (formerly a U. S. Attorney in this Court), we now turn to the grounds for defendant's motion under consideration.

1. Misjoinder of Counts; Pyramiding; Multiplicity; Separate and Distinct Offenses.

Defendant was, in effect, charged with violating two different statutes by committing an act of fraudulently receiving approximately 3,500,000 yen from a Japanese concern and/or individual doing business with the Navy through defendant's official position in violation of his responsibilities and duties.

> "A single transaction may violate several different laws and therefore may expose a defendant to conviction and punishment for two or more offenses. The test to be employed in determining whether this principle may be invoked is whether each offense charged requires proof of a fact which the others do not."

U.S. v. Barnett, 418 F.2d 309 (6th Cir., 1969). Possession of, and transporting the same illegal whiskey, for example, under separate counts has been upheld. **U.S. v. Barnett**, 407 F.2d 1114 (6th Cir., 1969). We find no merit in defendant's contentions here as to separate and distinct offenses, nor in his objections as to multiplicity and pyramiding for essentially the same reasons as were set out at the trial, and as explained herein. Under the theory of **U.S. v. Umans**, 368 F.2d 725, 730 (2nd Cir., 1966), relied on by defendant, the offenses set out in 18 U.S.C. 201(f) is a "lesser included offense of

Sec. 201(b)." Count One here charged a Sec. 201(c) offense and Count Two involved a Sec. 201(g) offense. Although **Umans** is no authority for defendant's contention, nevertheless, this Court intends to make the sentence, if any, run concurrently as to these Counts One and Two.

2. Official Acts.

The proof and evidence adduced by the government clearly established, and it was apparently credible to the jury, that defendant, while acting within his function as recreation division officer, engaged in acts which amounted to the solicitation of bribes and/or kickbacks. He could not otherwise, except by reason of his official capacity, have engaged in such dealings and transactions. He used his influence wrongfully and was himself influenced in his conduct by receiving and arranging for artificial prices which included a tainted amount for himself, all to the detriment of the United States. The act of defendant on or about November 1, 1969, was part and parcel of an act or transaction entered into with Austin while "acting for the government in an 'official function' and the matter in which his decision was to be influenced was 'before him in his official capacity'." **Blunden v. U.S.**, 169 F.2d 991 (6th Cir., 1948). The person offering the unlawful consideration believed Austin had the necessary authority and Austin actually possessed that authority. Defendant's contention that on or about November 1, 1969, he was not acting within the scope of his duties or authorities is likewise not well taken.

3. Hearsay; Testimony of Mr. Suzuki.

This was an unusual case in that the government produced witnesses from Japan, the Philippines, Guam, Europe, California, Washington, Washington, D. C., and

places between. It was apparent, in dismissing several counts of the indictment that the government found it difficult to produce certain other witnesses not subject to subpoena. Over serious and continuing objections of defendant, the principal officer of Kyosho Corporation, a Japanese, Hisashi Suzuki, was permitted to testify not only about transactions and conversations with defendant and his subordinates (who also testified) but also as to certain business records maintained in his Tokyo offices under his over-all supervision and control. Suzuki had some difficulty with English and an interpreter was made available to him and to defendant by the Court, and he was strenuously and at length cross-examined about events and transactions in controversy. His so-called "inconsistent positions" as a witness were gone into thoroughly by defendant and his counsel who had full and complete opportunity to confront and to examine this witness with benefit of pre-trial discovery. There is, in our judgment, no substance to the objections that defendant was in any fashion deprived of Fifth or Sixth Amendment rights or that principles of **Bruton v. U.S.**, 391 U.S. 123, would apply in this case. Testimony about and admission of official records kept and entered in the normal course of business is a well-known exception to the hearsay rule when proper foundation is laid as the government did in this case, in our opinion, with respect to Suzuki and other witnesses.

The records admitted into evidence from Kyosho Corporation met the Wigmore standards of trustworthiness; they were made and calculated for use essentially in the carrying out of Kyosho's business and particularly with regard to its dealings with Austin, which Suzuki and others recognized as being unusual and out of the ordinary. "The mere fact that such entries were made with a view to perpetuating evidence is not sufficient to show such bias as to exclude them." **Palmer v. Hoffman**, 129 F.2d 976

(2nd Cir., 1942), affirmed 318 U.S. 109 (1943). Nor was Exhibit 33, which is challenged by defendant, in the nature of an accident report or subjective expression that would justify exclusion as in **Palmer v. Hoffman.** Nor was the evidence admitted merely oral testimony about the contents of records made by some outside or independent appraiser as in **U.S. v. Anderson,** 447 F.2d 833 (8th Cir., 1971).

4. Fair Trial, Due Process.

Some of the records and material that were in the Recreation Office at Sangley Point, Philippines, were not produced at the trial. It was abundantly clear that this Base office had, since the episodes in controversy, been closed and phased out. Government counsel at the Court's direction conferred with defense counsel in advance of the trial on several occasions to present proof expected to be utilized by the prosecution. Both the Court and defendant counsel were assured that no data or information favorable to defendant was concealed, or if available, was failed to be produced. The Court directed the jury under all the circumstances to disregard any charge or circumstance relating to budget impropriety, if any, or failure to carry out budgetary procedures, if any, on the part of defendant or anyone else as this was deemed immaterial to the guilt or innocence of defendant under the several counts of the indictment which the jury did consider. The Court charged that introduction of evidence as to a budget covering the Recreation Office at Sangley Point was not directed towards any alleged misconduct on the part of defendant, but that Count Five charges pertained only to alleged defendant misconduct or improper activity on bidding procedures and alleged improper prepayments for goods not delivered.

That all records dealing with many other transactions engaged in by defendant as Recreation Officer were not

produced did not, in our opinion, deprive defendant of a fair trial. All pertinent documents relating to the particular alleged unlawful conduct of defendant were produced for pre-trial discovery purposes and at the trial itself, including a number of official handwriting specimens used for expert document and handwriting analysis. That no particular document was produced which would tend to be exculpatory as to defendant did not deny him due process, particularly since there was no particular document or paper purporting to relate to the alleged bribe or bribes and irregular procedures employed which defendant indicated was either concealed, misplaced or missing by the government.

Indeed, it was defendant's counsel in his zeal for his client who sometimes persisted in going into all manner of extraneous and irrelevant issues and documents which lengthened the trial and made it sometimes difficult to keep the pertinent issues and controversy in perspective.

The Court overrules defendant's motion based on any asserted departure from proper administration of equal criminal justice under law.

5. Venue.

The Constitution of the United States, Article III, Section 2, Paragraph 3, provides:

> "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed."

Amendment VI provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an im-

partial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. . . ."

Defendant was tried in the Western District of Tennessee, his home, where he was arrested on the basis of an indictment including a number of counts, charging him with serious crimes. He produced at the trial a number of character witnesses nearby. This was authorized under 18 U.S.C. §3238. No objection was made to the Court's conducting of voir dire of prospective jurors and both counsel were asked if further questions were indicated at its conclusion. Such objection or inference of unfairness is not well taken as to assertions about lack of a fair trial by an impartial jury in this judicial district.

6. Expert Witness.

Government counsel was permitted, as was defense counsel, to cross-examine the expert handwriting witness offered by adversary and to go into his experience, background and whether he was to be paid by the party producing him. Defendant's assertion of error in this regard is overruled.

7. Evidence of Pending Civil Proceeding.

Defendant was permitted, over the government's objection, to introduce, if he wished, recitations in a pleading by the government in a pending civil action in this Court for money assertedly due from the defendant to the United States growing out of the same transactions in controversy. This was conditional upon additional or the entire pleadings being made a part of the record if desired by the government, and defendant now objects to this action. The Court may have been in error in indicating permission for any portion of the civil proceedings to be admitted, but since it was not admitted, we find no prejudice to defendant who went fully into Mr. Suzuki's part in the

"fraudulent scheme" and "corrupt performance of official duties", on cross-examination.

8. General.

The Court ruled on a number of the grounds raised for new trial and/or acquittal during the trial. It denied motions for acquittal made at conclusion of prosecution proof and at conclusion of all the evidence. We find the evidence sufficient for a conviction on all counts, and the verdict to be supported by substantial evidence and in accord with the weight of credible proof, if believed by the jury. There was no basis in the evidence in our opinion either for a mistrial or a new trial. All grounds, then, of defendant's motion are determined to be without merit, not persuasive, and the motion is therefore hereby overruled.

/s/ HARRY W. WELLFORD
United States District Judge

Date: 4/17/72

APPENDIX B

JUDGMENT AND COMMITMENT

(Filed August 24, 1972)

United States District Court for the
Western District of Tennessee
Eastern Division

United States of America
v.
Charles Travis Austin
No. Cr. 9181

On this 23rd day of August, 1972 came the attorney for the government and the defendant appeared in person and with counsel, Thomas L. Robinson, Esquire. And after a full hearing, a jury verdict of Guilty having been entered on February 15, 1972 as to Counts 1, 2, 3, and 4 of the Indictment,

It Is Adjudged that the defendant is guilty as charged and has been convicted of the offense of being an officer and employee of the United States acting in an official function under and by authority of the Department of the Navy did corruptly accept, receive, solicit and agree to receive from the Kyosho Corporation, Tokyo, Japan sums of money for himself thereby being influenced to commit a fraud against the United States, said money belonging to the United States and the fruits of a fraudulent plan and scheme whereby purchase orders showing the purchase price of items listed thereon to be an amount substantially greater than the true and correct purchase price for said items were caused to be issued to said Corporation and caused checks to be issued, delivered and negotiated which were payable to said Corporation drawn on an account of

the Bureau of Naval Personnel in amounts falsely shown on said purchase orders to be the true and correct purchase price of items, said action being in performance of official acts in connection with the purchase of supplies and equipment in violation of Title 18, USC, § 201(c)(2) as charged in Counts 1 and 3; and acting in an official capacity unlawfully did accept, receive, solicit and agree to receive for himself sums of money from said Corporation because of official acts in violation of Title 18, USC, § 201(g) as more fully set out in Counts 2 and 4, as charged in the Indictment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two Years on each of Counts 1, 2, 3, and 4 to run concurrently, and said Two Year sentence to run consecutively with a One Year sentence this day imposed in CR-9212, making a total period of imprisonment of Three Years, said sentence to begin on a date to be set by the Court following appeal if an appeal be taken. In the meantime, the defendant may stand on his present bond.

And the defendant through counsel having filed a motion for a new trial, after a full hearing, said motion be and is overruled.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Mar-

shal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ HARRY W. WELLFORD
United States District Judge

Approved

/s/ LARRY E. PARRISH
Assistant United States Attorney

A True Copy. Certified this .... day of August, 1972.

(By) DIANNE SHORT
Deputy Clerk

(Signed) W. LLOYD JOHNSON
Clerk

APPENDIX C

JUDGMENT AND COMMITMENT

(Filed August 24, 1972)

United States District Court for the
Western District of Tennessee
Eastern Division

United States of America
v.
Charles Travis Austin
No. CR. 9212

On this 23rd day of August, 1972 came the attorney for the government and the defendant appeared in person and with counsel, Thomas L. Robinson, Esquire. And after a full hearing, a jury verdict of Guilty having been entered on February 15, 1972 as to the One Count Indictment.

It Is Adjudged that the defendant is guilty as charged and has been convicted of the offense of being an officer and employee of the United States of America under and by authority of the Department of the Navy, corruptly did accept and receive from the Kyosho Corporation, Tokyo, Japan a sum of money in return for being induced to purchase items from said Corporation each purchase being in an amount greater than $1,000.00 for use at the Naval Station without previously seeking bids from other sources, thereby, being induced to cause checks to be issued payable to said Corporation in full payment for said commodities prior to delivery, all in violation of official duties, in violation of Title 18, USC, § 201(c)(3), as charged in the Indictment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One Year, said One Year sentence to run consecutively with a Two Year sentence this day imposed in CR-9181 making a total period of imprisonment of Three Years. Said sentence to begin on a date to be set by the Court following an appeal if an appeal be taken, and in the meantime, the defendant may stand on his present bond.

It Is Further Ordered and Adjudged that the defendant pay a fine to the United States of America in the amount of One Thousand Five Hundred ($1,500.00) Dollars, said fine being a committed fine in that for the nonpayment of same the defendant surrender himself to the custody of the United States Marshal until payment of same or otherwise released according to law.

And the defendant through counsel having filed a motion for a new trial, after a full hearing, said motion be and is overruled.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ HARRY W. WELLFORD
United States District Judge

Approved

/s/ LARRY E. PARRISH
Assistant United States Attorney

A True Copy. Certified this ... day of August, 1972.

(By) DIANNE SHORT
Deputy Clerk

(Signed) W. LLOYD JOHNSON
Clerk

APPENDIX D

NOS. 73-1085- 1086
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
JUN 26 1973
JAMES A. HIGGINS, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

- vs -

CHARLES TRAVIS AUSTIN,

Defendant-Appellant

ORDER

BEFORE: CELEBREZZE and MC CREE, Circuit Judges, and MOYNAHAN,* District Judge.

Appellant was convicted by a jury of five counts of soliciting and accepting bribes as a public official of the United States to defraud the Government and of soliciting and accepting bribes as a public official of the United States to perform an official act, in violation of 18 U.S.C. §§ 201(c)(2), 201(g) (1970). He contends on appeal that

(1) The indictment under which he was charged was void because only hearsay testimony was presented to the grand jury and the jury was misled with respect to the nature of this testimony;

(2) The district court lacked jurisdiction or venue to try appellant because he was "first brought" within the meaning of 18 U.S.C. § 3238 (1970) into the Northern District of California instead of the Western District of Tennessee;

(3) The district court erred in failing to declare a mistrial or to exclude the testimony of the key Government witness because the testimony constituted hearsay and also violated appellant's Sixth Amendment right to confront the witnesses against him;

(4) A page of a corporate ledger sheet was improperly introduced as substantive evidence because it was not prepared in the regular course of business as required by 18 U.S.C. § 1732 (1970);

(5) The convictions of counts one and two amounted to two convictions for the commission of one act, which requires that the convictions be set aside; in the alternative, 18 U.S.C. § 201(g) is a lesser included offense of 18 U.S.C. § 201(c)(2), which requires the vacation of the conviction of count 2.

Upon consideration of the briefs and appendices and of the arguments of the parties, we determine that these contentions are without merit.

Accordingly, the judgment is affirmed.

Entered by order of the court

James A. Higgins
Clerk

APPENDIX E

NOS. 73-1085 - 1086
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

- vs - ORDER

CHARLES TRAVIS AUSTIN,

Defendant-Appellant

/

BEFORE: CELEBREZZE and MC CREE, Circuit Judges, and MOYNAHAN,* District Judge.

The petition for rehearing with suggestion for en banc consideration having been filed, and no member of the panel or active judge having requested a vote on the suggestion for en banc consideration, and the petition thereupon having been referred to the original panel for disposition, and it appearing that the contentions urged in the petition have been fully considered and properly determined, upon consideration, it is ORDERED that the petition be, and it hereby is DENIED.

Entered by order of the court

Clerk

*The Honorable Bernard T. Moynahan, Jr., Chief Judge, U. S. District Court for the Eastern District of Kentucky, sitting by designation.

APPENDIX F

In the United States District Court for the Western District of Tennessee, Eastern Division

United States of America, Plaintiff, v. Charles Travis Austin, Defendant.	Cr. No. 9181. 18 USC, §201(c)(2) 18 USC, §201(c)(3) 18 USC, §201(g)

INDICTMENT

(Filed July 7, 1970)

The Grand Jury Charges:

Count One

On or about the 6th day of October, 1969, at Tokyo, Japan,

Charles Travis Austin,

subsequently having been arrested on the 8th day of April, 1970 at Michie, Tennessee in the Western District of Tennessee, Eastern Division, being an officer and employee of the United States of America, acting for and on behalf thereof, in an official function, under and by authority of the Department of the Navy, to wit: as the Recreation Division Officer at the United States Naval Station, Sangley Point, Republic of the Philippines, did corruptly accept and receive from the Kyosho Corporation, Tokyo, Japan the sum of approximately 3,500,000 yen for himself, thereby, being influenced to commit a fraud against the United States of America, said 3,500,000 yen belonging to the United States of America and the fruits of a fraudulent plan and scheme whereby purchase orders showing

the purchase price of items listed thereon to be an amount substantially greater than the true and correct purchase price for said items were caused to be issued to said Kyosho Corporation by Charles Travis Austin, and Charles Travis Austin caused checks to be issued, delivered and negotiated which were payable to said Kyosho Corporation drawn on an account of the Bureau of Naval Personnel, an agency of the United States of America, in amounts falsely shown on said purchase orders to be the true and correct purchase price of items listed thereon, said purchase orders including, among others, Purchase Orders Nos. 0147-70, dated July 31, 1969; 0271-70, dated September 12, 1969; 0298-70, dated September 26, 1969; 0290-70, dated September 23, 1969, and 0290A-70, dated September 23, 1969, said action being in the performance of official acts by Charles Travis Austin in connection with the purchase of supplies and equipment by said Recreation Division, in violation of Title 18, United States Code, §201 (c)(2).

(nm. $29,700 or nm 15 yrs., or both and may be disqualified from holding any office of honor, trust or profit under the United States)

Count Two

On or about the 6th day of October, 1969, at Tokyo, Japan,

Charles Travis Austin,

subsequently having been arrested on the 8th day of April, 1970 at Michie, Tennessee in the Western District of Tennessee, Eastern Division, being an officer and employee of the United States of America, acting for and on behalf thereof, in an official function, under and by authority of the Department of the Navy, to wit: as the Recreation Division Officer at the United States Naval Station, Sang-

ley Point, Republic of the Philippines, unlawfully did accept and receive for himself the sum of approximately 3,500,000 yen from Hisashi Suzuki, President, Kyosho Corporation, because of official acts by Charles Travis Austin, to wit: causing to be delivered purchase orders, more fully and explicitly described in Count One of this Indictment, in performance of his official duties in connection with the purchase of supplies and equipment by the Recreation Division of the United States Naval Station, Sangley Point, Republic of the Philippines, in violation of Title 18, United States Code §201(g).

(nm $10,000., or nm 2 yrs., or both)

Count Three

On or about the 1st day of November, 1969, at Tokyo, Japan,

Charles Travis Austin,

subsequently having been arrested on the 8th day of April, 1970 at Michie, Tennessee in the Western District of Tennessee, Eastern Division, being an officer and employee of the United States of America, acting for and on behalf thereof, in an official function, under and by authority of the Department of the Navy, to wit: as the Recreation Division Officer at the United States Naval Station, Sangley Point, Republic of the Philippines, did corruptly solicit, seek and agree to receive from the Kyosho Corporation, Tokyo, Japan the sum of approximately Seventeen Thousand, Five Hundred ($17,500.00) Dollars for himself, thereby, being influenced to commit a fraud against the United States of America, said $17,500.00 being an amount belonging to the United States of America and the anticipated fruits of a fraudulent plan and scheme whereby purchase orders showing the purchase price of items listed thereon to be an amount substantially greater than the

true and correct purchase price for said items were caused to be issued to said Kyosho Corporation by Charles Travis Austin, and Charles Travis Austin caused checks to be issued, delivered and negotiated which were payable to said Kyosho Corporation drawn on an account of the Bureau of Naval Personnel, an agency of the United States of America, in amounts falsely shown on said purchase orders to be the true and correct purchase price of items listed thereon, said purchase orders being more fully and specifically described in Count One of this Indictment and in anticipation of the subsequent delivery of three additional Purchase Orders, Nos. 0307A-70, dated October 8, 1969; 0311A-70. dated October 6, 1969, and 0323A-70, dated October 15, 1969, said action being in performance of official acts by Charles Travis Austin in connection with the purchase of supplies and equipment by the Recreation Division of the United States Naval Station, Sangley Point, Republic of the Philippines, in violation of Title 18, United States Code, §201(c)(2).

(nm $52,500., or nm 15 yrs., or both and may be disqualified from holding any office of honor, trust or profit under the United States)

Count Four

On or about the 6th day of October, 1969, at Tokyo, Japan,

Charles Travis Austin,

subsequently having been arrested on the 8th day of April, 1970 at Michie, Tennessee in the Western District of Tennessee, Eastern Division, being an officer and employee of the United States of America, acting for and on behalf thereof, in an official function, under and by authority of the Department of the Navy, to wit: as the Recreation Division Officer at the United States Naval Station, Sang-

ley Point, Republic of the Philippines, unlawfully did solicit, seek and agree to receive for himself the sum of approximately Seventeen Thousand Five Hundred ($17,500.00) Dollars from Hisashe Suzuki, President, Kyosho Corporation, because of official acts by Charles Travis Austin, to wit: causing to be issued and delivered purchase orders, more fully and explicitly described in Count One and Count Three of this Indictment, in performance of his official duties in connection with the purchase of supplies and equipment by the Recreation Division of the United States Naval Station, Sangley Point, Republic of the Philippines, in violation of Title 18, United States Code §201(g).

(nm $10,000., or nm 2 yrs., or both)

Count Five

From on or about May 23, 1969, up to and including on or about September 29, 1969, at Manila, Republic of the Philippines,

Charles Travis Austin,

subsequently having been arrested on the 8th day of April, 1970, at Michie, Tennessee in the Western District of Tennessee, Eastern Division, being an officer and employee of the United States of America, acting for and on behalf thereof, in an official function, under and by authority of the Department of the Navy, to wit: as the Recreation Division Officer at the United States Naval Station, Sangley Point, Republic of the Philippines, did accept and receive for himself from J. O. Y. Enterprises, Manila, Republic of the Philippines the sum of approximately 15,318 pesos, thereby, being influenced to commit a fraud against the United States of America, said 15,318 pesos belonging to the United States of America and the fruits of a fraudulent plan and scheme whereby purchase orders showing

the purchase price of items listed thereon to be an amount substantially greater than the true and correct purchase price for said items were caused to be issued to said J.O.Y. Enterprises, Manila, Republic of the Philippines by Charles Travis Austin, said purchase orders including among others, Purchase Orders Nos. 0151-70, dated August 4, 1969; 0302-70, dated September 29, 1969; and 1023-69, dated May 23, 1969, said acting being in the performance of official acts by Charles Travis Austin in connection with the purchase of supplies and equipment by the Recreation Division, United States Naval Station, Sangley Point, Republic of the Philippines, in violation of Title 18, United States Code, §201(c)(2).

(nm. $11,488.50., or nm 15 yrs., or both and may be disqualified from holding any office of honor, trust or profit under the United States)

Count Six

From on or about May 23, 1969, up to and including on or about September 29, 1969, at Manila, Republic of the Philippines,

Charles Travis Austin,

subsequently having been arrested on the 8th day of April, 1970, at Michie, Tennessee in the Western District of Tennessee, Eastern Division, being an officer and employee of the United States of America, acting for and on behalf thereof, in an official function, under and by authority of the Department of the Navy, to-wit: as the Recreation Division Officer at the United States Naval Station, Sangley Point, Republic of the Philippines, unlawfully did accept and receive for himself the sum of approximately 15,318 pesos from Mrs. Yolanda O. Jaucian Cruz, Proprietress, J.O.Y. Enterprises, Manila, Republic of the Philippines, because of official acts by Charles Travis Austin,

to wit: causing to be issued and delivered purchase orders, more fully and explicitly described in Count Five of this Indictment, in performance of his official duties in connection with the purchase of supplies and equipment by the Recreation Division of the United States Naval Station, Sangley Point, Republic of the Philippines, in violation of Title 18, United States Code, §201(g).

(nm $10,000., or nm 2 yrs., or both)

Count Seven

On or about the 6th day of October, 1969, at Tokyo, Japan,

Charles Travis Austin,

subsequently having been arrested on the 8th day of April, 1970 at Michie, Tennessee in the Western District of Tennessee, Eastern Division, being an officer and employee of the United States of America, acting for and on behalf thereof, in an official function, under and by authority of the Department of the Navy, to wit: as the Recreation Division Officer at the United States Naval Station, Sangley Point, Republic of the Philippines, being induced to purchase, among other things, theatre chairs and artificial grass from Kyosho Corporation, Tokyo, Japan, each such purchase being for an amount greater than $1,000.00, for use at the United States Naval Station, Sangley Point, Republic of the Philippines, without previously seeking bids from sources other than said Kyosho Corporation in an effort to ascertain the lowest available price for the above-described commodities, and further, thereby, being induced to cause checks to be issued payable to said Kyosho Corporation in full payment for said above-described commodities prior to the delivery of those commodities to the appropriate division at the United States Naval Station, Sangley Point, Republic of the Philippines, all in

violation of the official duties of Charles Travis Austin, to wit: the requirements of the "Special Services Manual (NAVPERS 15869B), Chapter Five, Paragraph 514" and "Centralized Accounting Handbook for Navy Recreation Funds (NAVSO P-2460), Chapter Two, Paragraph 2380", in connection with the purchase of supplies and equipment by the Recreation Division, United States Naval Station, Sangley Point, Republic of the Philippines, in violation of Title 18, United States Code, §201(c)(3).

(nm $20,000.00 or nm 15 yrs., or both and may be disqualified from holding any office of honor, trust or profit under the United States)

A True Bill:

.....

Foreman

Date: July 7, 1970

.....

United States Attorney

APPENDIX G

In the United States District Court
For the Western District of Tennessee
Eastern Division

United States of America,
Plaintiff,
v.
Charles Travis Austin,
Defendant.

CR. No. 9212.
18 USC, § 201(c)(3).

INDICTMENT

(Filed April 5, 1971)

The Grand Jury Charges:

Count One

On or about the 6th day of October, 1969, at Tokyo, Japan, Charles Travis Austin subsequently having been arrested on the 8th day of April, 1970 at Michie, Tennessee in the Western District of Tennessee, Eastern Division, being an officer and employee of the United States of America, acting for and on behalf thereof, in an official function, under and by authority of the Department of the Navy, to wit: as the Recreation Division Officer at the United States Naval Station, Sangley Point, Republic of the Philippines, corruptly did accept and receive from the Kyosho Corporation, Tokyo, Japan, approximately 3,500,000 yen in return for being induced to purchase, among other things, theatre chairs and artificial grass from Kyosho Corporation, Tokyo, Japan, each such purchase being for an amount greater than $1,000.00, for use at the United States Naval Station, Sangley Point, Republic of the Philippines, without previously seeking bids from

sources other than said Kyosho Corporation in an effort to ascertain the lowest available price for the above-described commodities, and further, thereby, being induced to cause checks to be issued payable to said Kyosho Corporation in full payment for said above-described commodities prior to the delivery of those commodities to the appropriate division at the United States Naval Station, Sangley Point, Republic of the Philippines, all in violation of the official duties of Charles Travis Austin, to wit: the requirements of the "Special Services Manual (Navpers 15869B), Chapter Five, Paragraph 514" and "Centralized Accounting Handbook for Navy Recreation Funds (Navso P-2460), Chapter Two, Paragraph 2380", in connection with the purchase of supplies and equipment by the Recreation Division, United States Naval Station, Sangley Point, Republic of the Philippines, in violation of Title 18, United States Code, § 201(c)(3).

(nm $20,000., or nm 15 years., or both and may be disqualified from holding any office of honor, trust or profit under the United States)
A True Bill

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Foreman

Dated: April 5, 1971

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United States Attorney